



MARKET CONDUCT REPORT ON EXAMINATION

OF THE

PACIFIC LIFE & ANNUITY COMPANY

AS OF DECEMBER 31, 2017

EXAMINER:

PABLO A. RAMOS

DATE OF REPORT:

JUNE 3, 2019

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

September 20, 2023

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 31780, dated May 31, 2018, and annexed hereto, an examination has been made into the condition and affairs of the Pacific Life & Annuity Company, hereinafter referred to as the "Company," at its home office located at 700 Newport Center Drive, Newport Beach, CA 92260.

Wherever "Department" appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent within thirty days of the facts relative to the termination of the certificates of appointments of five agents. (See item 4A, sub-item 1 of this report.)
- The Company violated Section 1313(f) of the New York Insurance Law by disclosing the assets of entities in its holding company system without providing a statement of the separate financial condition of the Company. (See item 4A, sub-item 2 of this report.)
- The Company violated Section 1313(d) of the New York Insurance Law by stating in its advertisement that all assigned contracts will receive a statement of irrevocable guarantee from the guarantor Pacific LifeCorp, a member of the holding company system. (See item 4A, sub-item 3 of this report.)
- The Company violated Section 219.4(c) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the term “guarantee” in contexts that may be deemed misleading and capable of being deceptive. (See item 4A, sub-item 4 of this report.)
- The Company violated Section 219.4(e) of 11 NYCRR 219 (Insurance Regulation 34-A) when it stated in its advertisement that a return-of-premium death benefit is included with the policy at no additional cost and low cost. (See item 4A, sub-item 5 of this report.)
- The Company violated Section 219.4(h) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to substantiate the use of the phrase “low cost” to describe the cost of its life insurance and annuity products being advertised. (See item 4A, sub-item 6 of this report.)
- The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include the name of the city, town or village in which it has its home office in all 58 advertisements reviewed. (See item 4A, sub-item 7 of this report.)
- The Company violated Section 219.4(x) of 11 NYCRR 219 (Insurance Regulation 34-A) by overemphasizing the availability of the reduced premium loads and increased persistency credits and by failing to explain how the reduced premium loads can help the policy’s performance by an asterisk or other appropriate symbol which refers the reader to the specific portion of the advertisement which contains the full rate schedule for the policy being advertised. (See item 4A, sub-item 8 of this report.)

- The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to maintain a complete advertising file with a notation indicating the extent of distribution. (See item 4A, sub-item 9 of this report.)
- The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by failing to file its agent compensation schedule used during the examination period with the Department. (See item 4A, sub-item 10 of this report.)
- The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine and ascertain that the Disclosure Statements were accurate as well as complete and met the requirements of the Regulation. (See item 4A, sub-item 11 of this report.)
- The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by using a modified Disclosure Statement which differed from the forms set forth in Appendix 10B of Insurance Regulation 60 without obtaining prior approval. (See item 4A, sub-item 11 of this report.)
- The Company also violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60) by failing to implement procedures that comply with Regulation 60 to ensure that, for annuity replacements, the Company produce information in the Summary Result Comparison section of the Disclosure Statement concerning the surrender values and death benefit values in 1 year and 3 years for the existing annuity contracts. (See item 4A, sub-item 11 of this report.)
- The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to have deficiencies corrected or reject the application when the required forms were not received or the forms did not meet the requirements of Insurance Regulation 60. (See item 4A, sub-item 12 of this report.)
- The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to furnish to the insurer whose policy was replaced, a copy of the proposal, including the sales material and the completed Disclosure Statement within the required time frame. (See item 4A, sub-item 13 of this report.)

- The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide a revised Disclosure Statement to the applicant in the cases where the life insurance policy was issued other than as applied for. (See item 4A, sub-item 14 of this report.)
- The Company violated Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to deliver the completed Disclosure Statement to the policyholder no later than the time of delivery of the policy. (See item 4A, sub-item 15 of this report.)
- The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60) by allowing the applicants to sign the application and the Disclosure Statement before obtaining the information necessary to complete the Disclosure Statement from the replaced company, thereby failing to make available full and clear information on which an applicant for life insurance policies can make a decision in his or her best interest. (See item 4A, sub-item 16 of this report.)
- The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60) by allowing the applicants to sign the application and the Disclosure Statement before obtaining the information necessary to complete the Disclosure Statement from the replaced company, thereby failing to make available full and clear information on which an applicant for annuity contracts can make a decision in his or her best interest. (See item 4A, sub-item 16 of this report.)
- The Company violated Section 224.4(c) of 11 NYCRR 224 (Insurance Regulation 187) by processing annuities subsequent deposits into existing annuity contracts that were recommended to a consumer without obtaining all suitability information required under Section 224.3(e) of 11 NYCRR 224 (Insurance Regulation 187). (See item 4A, sub-item 17 of this report.)
- The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on the lives of minors in amounts exceeding the limits allowed by law. (See item 4B, sub-item 1 of this report.)

- The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent. (See item 4B, sub-item 2 of this report.)
- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants written preliminary information required by Section 3209 of the New York Insurance Law. (See item 4B, sub-item 3 of this report.)
- The Company violated Section 3209(d)(7) of the New York Insurance Law by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain term life policies. (See item 4B, sub-item 3 of this report.)
- The Company violated Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) and Section 3209(d)(7) of the New York Insurance Law by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain variable universal life insurance policies. (See item 4B, sub-item 4 of this report.)
- The Company also violated Section 3209(f) of the New York Insurance Law by failing to deliver the policy summary to variable universal life insurance applicants as a separate document. (See item 4B, sub-item 4 of this report.)
- The Company violated Section 2611(a) of the New York Insurance Law when it failed to obtain written informed consent prior to subjecting applicants to HIV related testing. (See item 4B, sub-item 5 of this report.)
- The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by failing to have a copy of the illustration used in the sale of the policy signed by the applicant at the time of application. (See item 4B, sub-item 6 of this report.)
- The Company violated Section 3209(d)(7) of the New York Insurance Law and Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of

the premiums paid for certain term life insurance policies issued with policy form P08TRM. (See item 4B, sub-item 7 of this report.)

- The Company also violated Section 243.2(b)(1)(iv) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain a copy of the preliminary information for term life insurance policies issued with policy form P08TRM in each of the seven files. (See item 4B, sub-item 7 of this report.)
- The Company violated Section 3209(d)(7) of the New York Insurance Law and Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for variable universal life insurance policies issued with policy form P05M1N-NY. (See item 4B, sub-item 8 of this report.)
- The Company violated Sections 53-2.1(a)(4), (5), and (6) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include median values in the preliminary information. (See item 4B, sub-item 8 of this report.)
- The Company violated Section 3209(d)(5) of the New York Insurance Law and Section 53-2.1(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating whether the loan rate is applied in advance or arrears. (See item 4B, sub-item 8 of this report.)
- The Company violated Section 3209(d)(6) of the New York Insurance Law and Section 53-2.1(a)(10) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include information concerning the life insurance cost indexes for 10 and 20 policy years in the preliminary information. (See item 4B, sub-item 8 of this report.)
- The Company violated Section 53-2.1(b) of 11 NYCRR 53 (Insurance Regulation 74) by failing to label the table of values and benefits based on current and median policy cost factors in a prominent manner as “not guaranteed.” (See item 4B, sub-item 8 of this report.)
- The Company violated Section 3209(b)(1)(B) of the New York Insurance Law by failing to provide a policy summary to the applicants upon delivery of the policies. (See item 4B, sub-item 9 of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices sent to life insurance policyholders that unless such payment

is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit. (See item 4C, sub-item 1 of this report.)

- The Company violated Section 3227(c) of the New York Insurance Law by failing to pay interest on surrender benefit payments. (See item 4C, sub-item 2 of this report.)
- The Company violated Section 3240(h)(7) of the New York Insurance Law and Section 226.5(a)(2)(ii) of 11 NYCRR 226 (Insurance Regulation 200) by failing to report to the Superintendent through the lost policy finder any benefits paid within thirty days of the final disposition of the requests. (See item 4C, sub-item 3 of this report.)
- The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim. (See item 4C, sub-item 4 of this report.)
- The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to an unauthorized insurer in its policy loan applications with New York policyholders. (See item 4C, sub-item 5 of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2012, through December 31, 2017. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2017, but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of market conduct activities and utilized the National Association of Insurance Commissioners' *Market Regulations Handbook* or such other examination procedures, as deemed appropriate, in such review.

This report on examination is confined to comments on matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of California on September 20, 1982 and commenced business on July 1, 1983. The Company is domiciled in the state of Arizona. The Company was licensed in New York on June 9, 1999. It is a wholly owned subsidiary of Pacific Life Insurance Company (“Pacific Life”), a stock life insurance company domiciled in the State of Nebraska. Pacific Mutual Holding Company is the Company’s ultimate parent.

B. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities, and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed in all 50 states and the District of Columbia. It is deemed to be a commercially domestic insurer under Section 1501(d) of the New York Insurance Law. In 2017, 75.93% of life insurance premiums, 86.80% of annuity considerations, and 3.5% of deposit-type funds were received from New York. Policies are written on a non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2017:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	75.9%	New York	86.8%
		Colorado	10.8
Subtotal	75.9%	Subtotal	97.6%
All others	<u>24.1</u>	All others	<u>2.4</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

Deposit Type Funds

Colorado	96.4%
New York	<u>3.6</u>
Subtotal	100.0%
All others	<u>0.0</u>
Total	<u>100.0%</u>

The Company's principal lines of business sold during the examination period were variable annuities, fixed annuities, individual life insurance, and structured settlement annuities. The Company offers a variety of variable and fixed annuity products, universal life insurance, indexed-universal life insurance, variable universal life insurance, term life insurance, and structured settlement annuities.

Fixed and variable annuity products are available through several independent third-party FINRA registered broker/dealer firms: national and regional wirehouses, independent planner firms, and financial institutions. Fixed annuity products are also available through independent annuity producers and general agencies. Structured settlement annuities are available through third-party structured settlement producers.

Life insurance products are distributed primarily through regional life offices. The products are also available through other distribution channels such as broker-dealer firms, wirehouses, and M Financial Holdings Incorporated, an association of independently owned and operated insurance and financial producers.

4. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

1. Section 2112(d) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment as set forth in subsection (a) of this section of any insurance agent, or title insurance agent licensed in this state, or upon termination for cause for activities as set forth in subsection (a) of section two thousand one hundred ten of this article, of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause”

During the examiner's review of producer licensing, the examiner noted that the Company terminated five agents without filing a statement of the facts relative to the termination of their certificates of appointments within thirty days with the Superintendent.

The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent within thirty days of the facts relative to the termination of the certificates of appointments of five agents.

The Company indicated that it has addressed the issues noted.

Also, during the examiner's review of producer licensing, it was noted that in 38 cases, the Department's licensing database indicated the agents as appointed or terminated, but the Company's data file did not reflect such updated information.

The examiner recommends that the Company exercise due care in preparation of its data file for producer licensing and ensure each agent's licensing status is updated correctly.

2. Section 1313(f) of the New York Insurance Law states:

“Advertisements and other public announcements directed primarily at calling the attention of policyholders or prospective policyholders to an insurer and containing a statement of the separate financial condition of the holding company system shall also contain a statement of the separate financial condition of the insurer which shall comply with this section.”

Two of the advertisements used by the Company during the examination period mentioned the assets of other entities in its holding company system without including a statement of the separate financial condition of the Company.

The Company violated Section 1313(f) of the New York Insurance Law by disclosing the assets of entities in its holding company system without providing a statement of the separate financial condition of the Company.

The Company indicated that it has addressed the issues noted.

3. Section 1313(d) of the New York Insurance Law states:

“No insurer doing business in this state nor any subsidiary thereof, or holding company or controlled person as defined in section one thousand five hundred one of this chapter nor any agent of any of the foregoing, shall in any advertisement or other public announcement make any statement or communication to the effect that the insurer has, or expects to have, reinsurance by any named assuming insurer not authorized to do such reinsurance business in this state, or to the effect that the insurer’s policies are guaranteed wholly or partly by any other person, insurer or institution.”

One of the two advertisements mentioned above, “form number H26132-15A - About Us public website 4/15,” contained a statement that all assigned contracts will receive a statement of irrevocable guarantee from the guarantor Pacific LifeCorp, a member of the holding company system. In response to examination correspondence, the Company indicated that the guarantee offered by Pacific LifeCorp did not involve the Company, nor any annuity contract issued by the Company in support of Pacific Life & Annuity Services, Inc. (“PLAS”) structured settlement obligations. PLAS is an affiliate of the Company and PLAS’s ultimate parent is Pacific Mutual Holding Company. The examiner determined that this advertisement may potentially mislead consumers into believing that the Company’s products may be guaranteed wholly or partly by any other person, insurer, or institution.

The Company violated Section 1313(d) of the New York Insurance Law by stating in its advertisement that all assigned contracts will receive a statement of irrevocable guarantee from the guarantor Pacific LifeCorp, a member of the holding company system.

The Company indicated that it has addressed the issues noted.

4. Section 219.4(c) of 11 NYCRR 219 (Insurance Regulation 34-A) states:

“The use of the terms instant, savings, guaranteed cost, guaranteed renewable, noncancelable, deposit, investment, or words of similar import or phrases which include such words, may, in the context used, be deemed to be misleading and capable of being deceptive.”

In two out of 58 life insurance and annuity advertisements reviewed, the advertisement used the term “guarantee” in contexts that may be deemed misleading and capable of being deceptive. The two advertisements are listed below:

1. Form number 13-415 Flyer – Which IUL: PL or Allianz? (15-42250-00)
2. Form number H26132-15A – About Us public website 4/15

Advertisement number 13-415 Flyer – Which IUL: PL or Allianz? (15-42250-00) mentioned Pacific Life’s indexed universal life insurance product and contained an irrelevant comparison regarding the product between Pacific Life’s 1-Year High Par and the S&P 500 for the period from January 15, 1973 through December 15, 2012 when in fact the product was not offered by the Company until September 2005. Moreover, the Company used the term “trigger” in the advertisement without defining it.

For form number “H26132-15A – About Us public website 4/15,” the Company indicated that it provided a link at the bottom of the webpage to a Financial Sheet for financial information concerning the Company. The examiner was unable to find the information concerning the Company’s financial condition. However, the advertisement mentioned only the total assets of Pacific LifeCorp as of December 31, 2014.

The Company violated Section 219.4(c) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the term “guarantee” in contexts that may be deemed misleading and capable of being deceptive.

The Company indicated that it has addressed the issues noted.

5. Section 219.4(e) of 11 NYCRR 219 (Insurance Regulation 34-A) states:

“The words free, no cost, without cost, no additional cost, at no extra cost, without additional cost, or words of similar import, may not be used with respect to any benefit or service being made available with the policy. An advertisement may specify the charge for a benefit or a service, or may state that a charge is included in the premium, or use other appropriate language.”

The Company’s advertisement form number 13304-16A- 5 Reasons VA Brochure – 6/16, contained the words “no additional cost” and “low cost” without specifying the charge for the benefit or service. In response to examination correspondence, the Company indicated that the brochure was for institutional use only and failed to provide evidence to support the use of the words “no additional cost” and “low cost” in its advertisement.

The Company violated Section 219.4(e) of 11 NYCRR 219 (Insurance Regulation 34-A) when it stated in its advertisement that a return-of-premium death benefit is included with the policy at no additional cost and low cost.

The Company indicated that it has addressed the issues noted.

6. Section 219.4(h) of 11 NYCRR 219 (Insurance Regulation 34-A) states:

“Any insurer using the phrase low cost or similar term, to characterize its operation, policy portfolio, or a particular policy form shall, upon request of the superintendent, submit to the superintendent such evidence as it may have to substantiate such use.”

The examiner requested that the Company provide evidence to substantiate the use of the phrase “low cost” and similar terms in three of its advertisements referenced below:

- 1) VLBD-OC-633C – Focus Equity Index (BlackRock) 15-72622-05
- 2) 13304-16A – 5 Reasons VA Brochure – 6/16
- 3) 17021-12 – Wells Fargo Pacific Odyssey Postcard

The Company was unable to provide responses that reasonably substantiated the use of the phrase “low cost” and similar terms in the three advertisements.

The Company violated Section 219.4(h) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to substantiate the use of the phrase “low cost” to describe the cost of its life insurance and annuity products being advertised.

The Company indicated that it has addressed the issues noted.

7. Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) states, in part:

“In all advertisements made by an insurer, or on its behalf, the name of the insurer shall be clearly identified, together with the name of the city, town or village in which it has its home office in the United States. . . .”

A review of 58 life and annuity advertisements revealed that all advertisements failed to contain the name of the city, town, or village in which the Company has its home office in the United States. In response to the examiner’s inquiry, the Company stated: “In accordance with Insurance Regulation No. 34-A (p), PL&A lists its home office in its advertisements (Newport Beach or Aliso Viejo, California), not its statutory home office (Phoenix, Arizona).” Per the Company’s annual statements filed during examination period (January 1, 2012, through December 31, 2017), the Company’s statutory home office was in Phoenix, Arizona.

The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include the name of the city, town or village in which it has its home office in all 58 advertisements reviewed.

The Company indicated that it is addressing the issues noted.

8. Section 219.4(x) of 11 NYCRR 219 (Insurance Regulation 34-A) states:

“An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the reduced initial premium. When an insurer charges an initial premium that differs in amount from that of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol which refers the reader to that specific portion of the advertisement which contains the full rate schedule for the policy being advertised.”

Page 3 of the Company’s advertisement form number MKT12-143B - Brochure - The Pacific Life Experience (15-40905-03) states, in part:

“ . . . Pacific Life Insurance Company reduced premium loads and increased persistency credits on a variety of life insurance policies. These savings can help your life insurance policy perform better. In addition, the company provides value to policyowners by maintaining competitive interest crediting rates.”

The interest crediting rates mentioned on page 3 of the advertisement was not followed by an asterisk or other appropriate symbol that referred the reader to the specific portion of the advertisement which contained the full rate schedule for the policy being advertised and the

advertisement did not delineate how the interest crediting rates were “competitive.” The advertisement also overemphasized the availability of the reduced premium loads and increased persistency credits and failed to explain how the reduced premium loads can help the policy’s performance by an asterisk or other appropriate symbol that refers the reader to the specific portion of the advertisement which contains the full rate schedule for the policy being advertised.

Furthermore, the advertisement stated that Pacific Life reduced the premium loads and increased persistency credits on a variety of life insurance policies and that these savings can help a customer’s life insurance policy perform better.

The Company violated Section 219.4(x) of 11 NYCRR 219 (Insurance Regulation 34-A) by overemphasizing the availability of the reduced premium loads and increased persistency credits and by failing to explain how the reduced premium loads can help the policy’s performance by an asterisk or other appropriate symbol which refers the reader to the specific portion of the advertisement which contains the full rate schedule for the policy being advertised.

The Company indicated that it has addressed the issues noted.

9. Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) states,

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. In order to be complete, the file must contain all advertisements whether used by the company, its agents or solicitors or other persons. That portion of the advertising file which has been covered by a filed report on examination may be eliminated.”

The Company’s advertising log (file) failed to include a notation indicating the extent of distribution for each advertisement disseminated during the examination period.

The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to maintain a complete advertising file with a notation indicating the extent of distribution.

The Company indicated that it is in the process of addressing the issues noted.

10. Section 4228(f)(1)(A) of the New York Insurance Law states, in part:

“A company shall make annual information filings with respect to any newly introduced plans or changes under which the company makes payments to agents

if such plans are commission plans for which the commission percentages are, in all policy or contract years, no greater than the commission percentages set forth in paragraphs one, two, three and four of subsection (d) of this section, expense allowance plans other than those meeting the definition of a compensation arrangement, plans subject to the provisions of paragraph one of subsection (e) of this section under which compensation is not in excess of two percent of the fund annually in any of the first four policy or contract years, or plans subject to the provisions of paragraph four of subsection (e) of this section. . . .”

A review of the Company’s commission schedules used during the examination period revealed that it paid agent compensation on its individual deferred annuity product sold with Contract Form number 30-2294, which was approved in New York on December 19, 2014. However, the Company failed to file the agent compensation schedule for its individual deferred annuity product in accordance with Section 4228 of the New York Insurance Law.

The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by failing to file its agent compensation schedule used during the examination period with the Department.

The Company indicated that it has addressed the issues noted.

11. Section 51.6 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“(b) Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the ‘Disclosure Statement,’ and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part; . . .

(e) Both the insurer whose life insurance policy or annuity contract is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. . . . All insurers covered under this Part shall furnish the Superintendent of Insurance with these procedures and the name and title of the designated principal officer by the effective date of this Part. Any changes in these procedures or the designated principal officer shall be furnished to the Superintendent of Insurance within thirty days of such change.”

Section 51.6 of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“(b) Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(4) examine the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations promulgated thereunder; . . .

(e) Both the insurer that issued the life insurance policy or annuity contract that is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. . . . All insurers covered under this Part shall furnish the superintendent with these procedures and the name and title of the designated principal officer by the effective date of this Part. Any changes in these procedures or the designated principal officer shall be furnished to the superintendent within 30 days of such change.”

Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“The forms set forth in Appendixes 10A, 10B, 10C and 11 of this Title are hereby approved for use as specified in this Part. The forms shall be set forth in at least 12-point type and shall be highlighted as indicated herein. Substantially equivalent forms may be adopted with the prior approval of the Superintendent of Financial Services.”

The examiner reviewed a sample of 25 life insurance replacements, of which 17 replacements were subject to Insurance Regulation 60, Third Amendment, and 8 were subject to Insurance Regulation 60, Second Amendment. The examiner also reviewed a sample of 60 external annuity replacements and 15 internal annuity replacements subject to Insurance Regulation 60, Third Amendment; and 60 external annuity replacements and five internal annuity replacements subject to Insurance Regulation 60, Second Amendment.

A) In all 25 (100%) life insurance replacements reviewed, the examiner noted various inconsistencies in the Disclosure Statements: the Disclosure Statements did not accurately describe the replacement transactions, including all charges and fees where a life insurance policy (whole life, term life, variable universal life, or universal life) was replaced by a variable universal life or

indexed universal life insurance policy and in cases where the upfront premium charges were not fully explained. The examiner noted that when the proposed life insurance policy was a variable universal life or an indexed universal life insurance policy, the agent failed to disclose the upfront fees and charges in the Agent's Statement section of the Disclosure Statement. This is especially important when the replaced policy is a whole life policy which does not have any upfront fees and charges. In five cases, the cash released upon the surrender of an existing life insurance policy that contained a cash surrender value was not fully disclosed in the Disclosure Statement. In 21 (84%) life replacements, the Disclosure Statement did not contain the rider benefits or fees in the Remarks section. In 16 (64%) life replacements where cash value of the existing policy may be transferred to the new index universal life or variable universal life policy, the Company failed to disclose in the Disclosure Statement that there would be a maximum premium load charge against the cash values that were transferred. In addition, there were five (5) instances where the agent used sales material for the sale of the proposed policy, but incorrectly noted that no sales material was used or did not affirmatively indicate that sales material was used in the transaction. In one case, the question in the Agent's Statement section concerning any sales material used was left blank even though sales material, namely an illustration, was included in the policy file. Moreover, the Company was unable to confirm the accuracy of the agent's responses to the questions in the Agent's Statement.

B) In 55 out of 60 (91.7%) external annuity replacements and 4 out of 5 (80.0%) internal annuity replacements reviewed for contracts issued from January 1, 2012, through April 20, 2015, and in 57 out of 60 (95.0%) external annuity replacements and in 14 out of 15 (93.3%) internal annuity replacements reviewed for policies issued from April 21, 2015, through December 31, 2017, the examiner noted the following in the Disclosure Statements:

(i) The Agent Statement section did not accurately describe the replacement transactions, including having incomplete or incorrect agent statements, or stating the advantage of continuing the existing life insurance policy or annuity contract as "None," when in fact, there were advantages of continuing the existing contracts;

(ii) In 21 (17.5%) (5 from January 1, 2012, through April 20, 2015, and 16 from April 21, 2015, through December 31, 2017) cases of annuity external replacement transactions where fixed annuity contracts were replaced by another fixed annuity contract, the agents failed to specify the

period in which the proposed contracts' interest rates were higher than the rates for the existing annuity contracts. In five (23.8%) instances, the agents indicated that the proposed annuity contracts provided a "higher" rate and in one instance the agent indicated "a better interest rate" as the reasons for recommending the proposed annuity contracts when in fact the rates for the proposed annuity contracts are higher for a specified period (i.e., 7 years or 10 years depending on the terms of the annuity contract). Such statements were not true because the higher rates for the proposed contracts would be guaranteed only for certain number of years while the fixed rate for the existing contract would be guaranteed for the life of the contract.

(iii) In 43 out of 60 (71.7%) external replacement cases and 2 out of 5 (40.0%) internal replacement cases subject to Insurance Regulation 60 (Second Amendment) and in 41 out of 60 (68.3%) external replacement cases and 14 out of 15 (87.5%) internal replacements cases subject to Insurance Regulation 60 (Third Amendment), the expense charges or annual fees for the proposed contracts or riders were not disclosed in the Disclosure Statement even though the riders were stated as the reason for the replacement;

(iv) The existing contracts had one or more riders; however, the agents' responses in the Agent Statement section failed to disclose to customers that the proposed replacements would eliminate the benefit of such riders;

(v) The replacements were exchanges from variable to fixed annuities or vice versa. However, the agents failed to disclose to the applicants the obvious benefits of the existing contracts such as guaranteed rate of growth for fixed to variable annuity replacements or the ability to participate in market gains for variable to fixed annuity replacements;

(vi) In cases of replacements from life insurance policies to annuity contracts, the entries in the Summary Results Comparison section of the Disclosure Statement for the proposed annuity indicated "see illustration" rather than having the actual numbers filled out;

(vii) In 7 out of 60 (11.7%) external replacements reviewed for annuities issued from January 1, 2012, through April 20, 2015, the total amounts transferred from the proposed contracts were different compared to the amounts reported in the Disclosure Statement, and revised Disclosure Statements were not prepared;

(viii) In 7 out of 60 (11.7%) external replacement cases reviewed for compliance with Insurance Regulation 60 (Second Amendment) and in 2 out of 60 (3.3%) external replacements cases reviewed for compliance with Insurance Regulation 60 (Third Amendment) in which the

existing annuity contracts were fixed annuity contracts, there were instances in which the section concerning “Guaranteed Rates” under the Description of Transaction was left blank;

(ix) In one (1.7%) external annuity replacement reviewed for compliance with Insurance Regulation 60 (Second Amendment), the agent left the Agent’s Statement section of the Disclosure Statement blank, and the Company indicated that it relied on Annuity Acknowledge Form for purpose of suitability review. Thus, the consumer was not adequately informed of the benefits of the proposed annuity contract and the benefits of maintaining the replaced annuity contract;

(x) In one (1.7%) external annuity replacement reviewed for compliance with Insurance Regulation 60 (Second Amendment), the agent indicated “Subaccounts, management companies” as the response to questions #1 and 2 in the Agent’s Statement section of the Disclosure Statement. Question #1 pertains to the benefits of the proposed annuity contract and question #2 pertains to the benefits of maintaining the existing annuity contract. Thus, the agent’s response to these two questions do not reflect the benefits related to the proposed annuity contract and the existing annuity contract; and

(xi) In cases where two or more existing contracts were replaced, there were 16 instances in which the Company failed to complete a composite Disclosure Statement in accordance with the instructions in Appendix 10B of Insurance Regulation 60.

C) In three out of five (60%) annuity internal replacements and in 45 out of 60 (75%) annuity external replacements reviewed for compliance with Insurance Regulation 60 (Second Amendment), the examiner noted that the Disclosure Statement used was different from the approved Appendix 10B of Insurance Regulation 60 Disclosure Statement. The Company used a Disclosure Statement form that contained the following two comparisons in the Summary Result Comparison section, of the Disclosure Statement: 1) comparison of the values for the proposed annuity contract net of expenses and fees to the existing annuity contract net of expenses and fees; and 2) comparison of the values for the proposed annuity contract without deduction of separate account expenses and fees to the existing annuity contract net of expenses and fees. The Department’s instructions for Appendix 10B require that the Disclosure Statement include a comparison of the values of the proposed annuity to the existing annuity with a deduction of expenses and fees. To show another comparison without expenses and fees on the same product would be misleading and confusing to consumers.

The Company indicated that it commenced using the unapproved modified Disclosure Statement on July 31, 2002, and discontinued using it in 2014, prior to the commencement of the exam.

The Company failed to submit the modified Disclosure Statement to the Department for review as any changes to the Disclosure Statement would require prior approval. Moreover, the only case in which the Department allows multiple Summary Result Comparisons would be when the replacement transaction involves multiple policies and/or contracts being replaced. In the 48 cases noted above, the Company used two Summary Result Comparisons for the same product based on whether fees are included in the values for the proposed annuity contract. The Department's instructions require that the Disclosure Statement clearly state the values in the Summary Results Comparison section after deduction of expenses and fees.

D) In two out of five (40%) annuity internal replacements reviewed for compliance with Insurance Regulation 60 (Second Amendment) and in 14 out of 15 (93.3%) annuity internal replacements reviewed for compliance with Insurance Regulation 60 (Third Amendment), the examiner noted that the Summary Result Comparisons section in the Disclosure Statement did not contain any information for the existing annuity's surrender value and death benefit value "In 1 Year" and "In 3 Years" as required in the instructions for Appendix 10B. When the examiner requested that the Company explain why information concerning the existing annuity contract's surrender and death benefit values in 1 year and in 3 years were not included in the Disclosure Statement, the Company indicated that its normal practices do not require inclusion of this information. Section 51.6(b)(3) of Insurance Regulation 60 (Second Amendment) and Section 51.6(b)(4) of Insurance Regulation 60 (Third Amendment) require that the Company examine any proposal used, sales material used in the sale, and the Disclosure Statement, and ascertain that the documents are accurate. In addition, Section 51.6(e) of Insurance Regulation 60 requires the Company to establish and implement procedures to ensure compliance with Insurance Regulation 60.

E) The examiner selected a sample of 60 subsequent deposits into annuities for review and noted discrepancies in the Disclosure Statement as described below.

(1) In two cases (3.3%), the agent replied “None” to the question in the Agent’s Statement section of the Disclosure Statement which asks about the advantages of continuing the existing annuity contract, when in fact, there were advantages of continuing the existing contracts.

(2) In four cases (6.7%), the examiner noted inaccuracies or discrepancies in the information reported in the Disclosure Statement for the existing annuity contracts. In one case, the Disclosure Statement contained incorrect surrender values in year 10 at the guaranteed rate and at the current rate, incorrect death benefit values in year 3 at the guaranteed rate and at the current rate, and incorrect death benefit values in year 10 at both the guaranteed rate and at the current rate for the replaced annuity contract. In the second case, the Disclosure Statement contained incorrect surrender value in year 1 at both the guaranteed and at the current rate, and incorrect death benefit value in year 1 at the guaranteed and at the current rate for the replaced annuity contract. In the third case, the Disclosure Statement contained incorrect values for death benefit values at years 1, 3, and 5 at 12% for the replaced annuity contract. In the fourth case, the Disclosure Statement did not contain any information for the death benefit value and surrender values at guaranteed rate and at the current rate for years 1 and 3 for the replaced annuity contract.

(3) In 14 cases (23.3%), the examiner noted discrepancies in the Disclosure Statements, including the agents’ failure to indicate the annuity contract number and the issue date of the existing annuity contracts which will receive the subsequent deposits.

(4) In 16 (26.7%) cases, the Company used a Disclosure Statement form that contained two comparisons in Part C, namely the Summary Result Comparison section, of the Disclosure Statement. The two comparisons are as follows: 1) comparison of the values for the proposed annuity contract net of expenses and fees to the existing annuity contract net of expenses and fees; and 2) comparison of the values for the proposed annuity contract without deduction of separate account expenses and fees to the existing annuity contract net of expenses and fees. The Department’s instructions for Appendix 10B require that the Disclosure Statement include a comparison of the values of the proposed annuity to the existing annuity with a deduction of expenses and fees. To show another comparison without expenses and fees on the same product would be misleading and confusing to consumers.

(5) In 23 (38.3%) cases, the Remarks section in the Agent’s Statement section of the Disclosure Statement was left blank when in fact the proposed annuity contract is a variable

annuity contract that contains mortality and expense fees which should be disclosed in the Disclosure Statement.

The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine and ascertain that the Disclosure Statements were accurate as well as complete and met the requirements of the Regulation.

The Company indicated that it is no longer issuing replacement life insurance policies. As for annuity replacements, the Company indicated that it is in the process of addressing the issues noted.

The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by using a modified Disclosure Statement which differed from the forms set forth in Appendix 10B of Insurance Regulation 60 without obtaining prior approval.

The Company indicated that it is in the process of addressing the issues noted.

The Company also violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60) by failing to implement procedures that comply with Regulation 60 to ensure that, for annuity replacements, the Company produce information in the Summary Result Comparison section of the Disclosure Statement concerning the surrender values and death benefit values in 1 year and 3 years for the existing annuity contracts.

The Company indicated that it has addressed the issues noted.

12. Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein.”

The examiner’s review of 25 life insurance replacements revealed that in eight cases (32%), the Disclosure Statement did not: 1) contain the information concerning the cash released upon the

surrender of an existing life insurance policy that contained the surrender value; 2) indicate all fees associated with the riders in the transaction; 3) indicate a premium charge for the proposed variable universal life and indexed universal life insurance policies; and 4) indicate the maximum premium load charge for the proposed indexed universal life insurance policy.

The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to have deficiencies corrected or reject the application when the required forms were not received or the forms did not meet the requirements of Insurance Regulation 60.

The Company indicated that it is no longer issuing replacement life insurance policies.

13. Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement; . . .”

Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(6) Within ten days of the delivery of the life insurance policy or annuity contract, furnish to the insurer that issued the coverage that is being replaced the completed ‘Disclosure Statement’ and a list of the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract with an offer to provide a copy of such material within ten days of a request for the material;”

In four out of eight (50%) life insurance replacements reviewed for compliance with Insurance Regulation 60, Second Amendment, the Company failed to furnish to the insurer whose policies were being replaced, a copy of the proposal, including the sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement within ten days of receipt of the application.

In 16 out of 17 (94.1%) life insurance replacements reviewed for compliance with Insurance Regulation 60, Third Amendment, the Company failed to furnish to the insurer whose policies were being replaced, a copy of the proposal, including the sales material used in the sale of the proposed life insurance policy, and the completed Disclosure Statement within ten days of the delivery of the life insurance policy.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to furnish to the insurer whose policy was replaced, a copy of the proposal, including the sales material and the completed Disclosure Statement within the required time frame.

The Company indicated that it is no longer issuing replacement life insurance policies.

14. Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(9) In the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised ‘Disclosure Statement,’ any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material.”

Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(10) If an initial ‘Disclosure Statement’ was provided to the applicant prior to the delivery of the life insurance policy or annuity contract and the life insurance policy or annuity contract is issued other than as applied for, then the insurer shall provide the owner a revised ‘Disclosure Statement’ that conforms to the life insurance policy or annuity contract as issued no later than the time of delivery of the policy or contract, except that a revised ‘Disclosure Statement’ does not need to be provided where there are changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to section 1035 of the Internal Revenue Code, rollovers or transfers if the changes do not impact the

key benefits and features of the life insurance policy or annuity contract as applied for.”

In all eight (100%) life insurance replacements reviewed for compliance with Section 51.6(b)(9) of Insurance Regulation 60 (Second Amendment) and in 10 out of 17 (59%) life insurance replacements reviewed for compliance with Section 51.6(b)(10) of Insurance Regulation 60 (Third Amendment), the Company failed to provide a revised Disclosure Statement to the applicant in the cases where the life insurance policy was issued other than as applied for.

The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide a revised Disclosure Statement to the applicant in the cases where the life insurance policy was issued other than as applied for.

The Company indicated that it is no longer issuing replacement life insurance policies.

15. Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .
Deliver the completed ‘Disclosure Statement’ to the policy or contract holder no later than the time of delivery of the policy or contract. The insurer may, at its discretion, require the ‘Disclosure Statement’ to be signed by the applicant, a copy of which shall be provided to the applicant at the time the applicant signs the ‘Disclosure Statement’;”

In 3 out of 17 (17.6%) life insurance replacements reviewed for compliance with Section 51.6(b)(5) of Insurance Regulation 60 (Third Amendment), the Company delivered the completed Disclosure Statement to the applicant after the date of policy delivery.

The Company violated Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to deliver the completed Disclosure Statement to the policyholder no later than the time of delivery of the policy.

The Company indicated that it is no longer issuing replacement life insurance policies.

16. Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60, Second and Third Amendments) states:

“protect the interest of the public by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies and annuity contracts; by making available full and clear information on which an applicant for life insurance or annuities can make a decision in his or her own best interest . . .”

The examiner reviewed a sample of 25 external indexed universal, variable universal life, and term life insurance replacements. In 16 out of 25 (64%) external life replacements where the cash value of the existing policy may be transferred to the new index universal life or variable universal life policy, the Company failed to disclose in the Disclosure Statement that there would be a maximum premium load charge against the cash values that were transferred. This case raises concerns in comparisons made with existing life policies with cash values, for example, whole life policies do not have upfront premium charges. Also, in cases where a variable universal life policy or indexed universal life policy replaces a universal life policy, variable universal life policy or indexed universal life policy, the premium load charge would further diminish the potential accumulation of future cash values for the policyholders because the policyholder would once again incur a premium load rate charge upfront upon the purchase of another variable universal life or indexed universal life policy. In summary, the Disclosure Statements inaccurately described transactions where a life policy with cash values was replaced by an indexed universal life or variable universal life policy and in cases where the replacing policy had upfront premium charges that were not fully explained.

In 16 life insurance replacements in which the existing policy would be able to accumulate cash value and the proposed policy contained a premium load charge at policy inception, the Company did not make available full and clear information when it failed to present an accurate side-by-side comparison of the existing and proposed policies on which the applicant could make an informed decision in his or her own best interests.

The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60) by allowing the applicants to sign the application and the Disclosure Statement before obtaining the information necessary to complete the Disclosure Statement from the replaced company, thereby failing to make available full and clear information on which an applicant for life insurance policies can make a decision in his or her best interest.

The Company indicated that it is no longer issuing replacement life insurance policies.

The examiner reviewed a sample of 60 annuity external replacements and five annuity internal replacements for compliance with Insurance Regulation 60 (Second Amendment). In 43 out of 60 (71.67%) external replacements and 2 out of 5 (40.00%) internal replacements, the proposed annuity contracts were variable annuities. The proposed contracts had one or more riders and the agents disclosed in the Agent Statement's section that the presence of the riders were advantages of the proposed contracts yet failed to disclose in the Disclosure Statement that the riders contain annual charges against the value of the policies, which would diminish the potential accumulation of future cash values for the contract holders. Further, in 11 out of 60 (18.3%) external replacements reviewed, the agents did not disclose the details of any policy expenses in the Disclosure Statement for the proposed contracts when in fact, the proposed variable annuity contracts contained annual mortality expense and administrative expense charges. Also, in 7 out of 60 (11.7%) external replacements reviewed, the agents did not disclose in the Disclosure Statement that the proposed annuity contracts contained a \$50 annual policy fee, which is applicable if the annuity contract value is under \$50,000. In summary, in the 43 external replacements and 2 internal replacements in which the proposed annuity contracts were variable annuities, the agent failed to include the contract's mortality and expense risk charges, administrative fees, annual fees, average annual fund expenses, and rider benefits or fees in the Remarks section of the Disclosure Statement in adherence to Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60).

The examiner also reviewed a sample of 60 annuity external replacements and 15 annuity internal replacements for compliance with Insurance Regulation 60 (Third Amendment). In 41 out of 60 (68.3%) external replacements and in 14 out of 15 (93.3%) internal replacements, the proposed annuity contracts were variable annuities. The contracts contained mortality and expense risk charges and administrative fees, which reduce potential cash values. The charges and fees were not disclosed in the Remarks section in the Agent's Statement section of the Disclosure Statements. In 20 out of 60 (33.3%) external replacements and 5 out of 15 (33.3%) internal replacements where the proposed contracts had one or more riders, the agents failed to disclose that the riders contained annual charges against the value of the policies, which would diminish the potential accumulation of future cash values for the contract holders. In 17 out of 60 (28.3%)

external replacements and in 2 out of 15 (13.3%) internal replacements reviewed, the agents did not disclose in the Disclosure Statement that the proposed annuity contracts contained an annual fee (\$30 or \$50 as specified in the contract specifications page), which is applicable if the proposed annuity contract's value is under \$50,000. In summary, in the 41 external replacements and 14 internal replacements in which the proposed annuity contracts were variable annuities, the agent failed to include the contract's mortality and expense risk charges, administrative fees, annual fees, average annual fund expenses, and rider benefits or fees in the Remarks section of the Disclosure Statement in adherence to Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60).

The examiner reviewed a sample of 60 subsequent deposits into annuities and noted the following:

In 17 out of 29 (58.6%) cases that were subject to Insurance Regulation 60, Third Amendment, and in 18 out of 31 (58%) cases that were subject to Insurance Regulation 60, Second Amendment, the Agent's Statement section of the Disclosure Statement did not contain information concerning the mortality and expense fees for the proposed variable annuity contracts. In summary, in the 35 (58.3%) subsequent deposits into annuities in which the proposed contracts were variable annuities, the agent failed to include the contract mortality and expense risk charges, administrative fees, annual fees, and average annual fund expenses in the Remarks section of the Disclosure Statement in adherence to Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60).

In 11 out of 29 (37.9%) subsequent deposits into annuities that were subject to Insurance Regulation 60, Third Amendment, and 7 out of 31 (22.6%) subsequent deposits that were subject to Insurance Regulation 60, Second Amendment, the expenses and fees for the riders were not disclosed in the Disclosure Statements, as required by Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60).

The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60) by allowing the applicants to sign the application and the Disclosure Statement before obtaining the information necessary to complete the Disclosure Statement from the replaced company, thereby failing to make available full and clear information on which an applicant for annuity contracts can make a decision in his or her best interest.

The Company indicated that it is in the process of addressing the issues noted.

17. Section 224.3(e) of 11 NYCRR 224 (Insurance Regulation 187) states:

“Suitability information means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

- (1) age;
- (2) annual income;
- (3) financial situation and needs, including the financial resources used for the funding of the annuity;
- (4) financial experience;
- (5) financial objectives;
- (6) intended use of the annuity;
- (7) financial time horizon;
- (8) existing assets, including investment and life insurance holdings;
- (9) liquidity needs;
- (10) liquid net worth;
- (11) risk tolerance; and
- (12) tax status.”

Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187) states, in part:

“(a) In recommending to a consumer the purchase or replacement of an annuity contract, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer’s investments and other insurance policies or contracts and as to the consumer’s financial situation and needs, including the consumer’s suitability information, and that there is a reasonable basis to believe all of the following . . .

(b) Prior to the recommendation of a purchase or replacement of an annuity contract, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain the consumer’s suitability information.

(c) Except as provided under subdivision (d) of this section, an insurer shall not issue an annuity contract recommended to a consumer unless there is a reasonable basis to believe the annuity contract is suitable based on the consumer’s suitability information . . . ”

During the examination period, the Company sold individual variable and fixed annuity contracts in which the agents and third-party broker dealers made reasonable efforts to obtain suitability information and considered the prospective insured’s age, financial condition, need for an annuity as well as the values, benefits, surrender charges, and the intended use of the annuity. The examiner’s review of a sample of 60 subsequent deposits into annuities revealed that in 32 (53.33%) cases, the agent completed Regulation 60 documentation but did not complete all the

suitability information as required under Insurance Regulation 187. In one subsequent deposit, a suitability review was not performed. In 24 subsequent deposits into annuities that were reviewed for compliance with Section 224.3(e)(3) of the Regulation, the files did not contain information concerning each of the customers' financial situation, namely the consumer's living expenses.

The Company violated Section 224.4(c) of 11 NYCRR 224 (Insurance Regulation 187) by processing annuities subsequent deposits into existing annuity contracts that were recommended to a consumer without obtaining all suitability information required under Section 224.3(e) of 11 NYCRR 224 (Insurance Regulation 187).

The Company indicated that it has addressed the issues noted.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

1. Section 3207(b) of the New York Insurance Law states:

“An insurer may deliver or issue for delivery in this state a policy or policies of life insurance upon the life of a minor under the age of fourteen years and six months, provided that such policy or policies are effectuated by a person or persons having an insurable interest in the life of such minor or by a person or persons upon whom such minor is dependent for support and maintenance and provided further that an insurer shall not knowingly issue such a policy or policies for an amount which, together with the amount of life insurance under any other policy or policies then in force upon the life of such minor, is in excess of the limit of fifty thousand dollars or the limit of fifty per centum or the limit of twenty-five per centum in the case of a minor under the age of four years and six months of the amount of life insurance in force upon the life of the person effectuating the insurance at the date of issue of the policy on the life of such minor, whichever limit is the greater, and any amount of life insurance on the life of such minor not in excess of such limit when issued shall not be deemed to be in excess thereof by reason of any reduction thereafter in the amount of life insurance in force upon the life of the person effectuating the insurance.”

The examiner reviewed all 26 individual life insurance policies issued on the lives of minors under the age of fourteen and one-half years with the amount of insurance over fifty thousand dollars during the examination period. In 7 out of 26 (27%) policies, the amount of insurance issued exceeded the limits allowed by law.

The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on the lives of minors in amounts exceeding the limits allowed by law.

The Company indicated that it has addressed the issues noted.

2. Section 3201 of the New York Insurance Law states, in part:

“(a) . . . ‘policy form’ means any policy, contract, certificate, or evidence of insurance and any application thereof, or rider or endorsement thereto . . .

(b)(1) No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . .”

The examiner reviewed a sample of policies issued during the examination period and the applicable policy forms.

- A. In 5 out of 114 (4%) variable annuity contracts reviewed, the Company used application form 25-2235-S-14 that was rejected by the Department.
- B. In 18 out of 21 (86%) corporate and business owned life insurance policies reviewed, the Company used policy forms P08SE5 and P08VP1-NY that were different from the forms filed with and approved by the Superintendent. The discrepancies included language concerning “Guideline Single Premium” and “Guideline Level Premium” that were not included in Page 3.0 of the specimen contract.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent.

The Company indicated that it has addressed the issues noted.

The examiner recommends that the Company refile policy forms P08SE5 and P08VP1-NY and include the Guideline Single Premium and Guideline Level Premium as bracketed items.

The Company indicated that it has addressed the issues noted.

3. Section 3209(b) of the New York Insurance Law states, in part:

“(b)(1) No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, as set forth in subsection (n) of this section, unless the prospective purchaser has been provided with the following:

(A) a copy of the most recent buyer’s guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken. When sales solicitations are made by mail, without the involvement of an

agent or broker, each initial solicitation must include a copy of the buyer's guide unless the policy for which application is made provides for a period of at least thirty days within which the applicant may return the policy for an unconditional refund of the premiums paid, in which event the buyer's guide must be delivered with the policy or prior to delivery of the policy; in addition, such solicitation must alert the prospective purchaser of the right to receive, upon request, a buyer's guide and a policy summary prior to delivery of the policy; . . . ”

Section 3209(d) of the New York Insurance Law states, in part:

“The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(7) in addition, the applicant shall be advised that, when the policy is issued, a complete policy summary, including cost data, based on the benefits, premiums and dividends of the policy as issued, will be furnished; and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid; . . .”

The examiner's review of a sample of 23 term life insurance policies issued during the examination period revealed that in two (9%) policies, the Company failed to provide the preliminary information to the applicants at or prior to the time the applications were taken. Moreover, the examiner's review of the 23 term life insurance policies revealed that in all cases (100%), the preliminary information did not contain a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants written preliminary information required by Section 3209 of the New York Insurance Law.

The Company indicated that it has addressed the issues noted.

In addition, the Company violated Section 3209(d)(7) of the New York Insurance Law by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain term life policies.

The Company indicated that it has addressed the issues noted.

4. Section 53-2.1 of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“(a) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(9) a statement advising the applicant that when the policy is issued, a complete policy summary including cost data, based on the benefits, premiums and dividends of the policy as issued will be furnished, and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premium paid or the adjusted amount if such policy provides for a market-value adjustment pursuant to Section 3203(a)(11) of the Insurance Law; . . . ”

Section 3209 of the New York Insurance Law states, in part:

“(d) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(7) in addition, the applicant shall be advised that, when the policy is issued, a complete policy summary, including cost data, based on the benefits, premiums and dividends of the policy as issued, will be furnished; and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid; . . .”

Section 3209(f) of the New York Insurance Law states:

“The policy summary must be a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in paragraph five of subsection (e) of this section shall be listed in total, not on a per thousand or per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class. Zero amounts shall be displayed as zero and shall not be displayed as a blank space.”

The examiner’s review of a sample of 10 variable universal life insurance (“VUL”) policies issued during the examination period revealed that in all cases (100%), the preliminary information did not contain a statement indicating that there would be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid. Also, in all 10 VUL policies reviewed (100%), each policy file contained a document that served as both the preliminary information and policy summary and contained a paragraph that indicated that a complete policy summary would be furnished at delivery which may be confusing to the applicant. The document had a statement immediately above the signature line which indicates that it “is

provided to satisfy the preliminary information requirements for variable life insurance applied for in the state of New York” which does not meet the requirements of Insurance Regulation 74.

The Company violated Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) and Section 3209(d)(7) of the New York Insurance Law by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain variable universal life insurance policies.

The Company indicated that it has addressed the issues noted.

The Company also violated Section 3209(f) of the New York Insurance Law by failing to deliver the policy summary to variable universal life insurance applicants as a separate document.

The Company indicated that it has addressed the issues noted.

The examiner recommends that the Company use two separate documents for the required disclosures concerning the preliminary information and the policy summary as required under Section 3209(f) of the New York Insurance Law.

The Company indicated that it has addressed the issues noted.

5. Section 2611(a) of the New York Insurance Law states:

“No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.”

The examiner’s review of a sample of 49 life insurance policies issued during the examination period in which the insured was subjected to HIV related testing revealed that in five (10%) cases, the HIV consent forms were signed by the applicants after they were subjected to HIV related testing. Also, in 2 out of 49 (4%) cases, the signed HIV consent forms were not dated; thus, the examiner was unable to determine whether the HIV consent form was signed at or prior to the date the applicant was subjected to HIV related testing.

The Company violated Section 2611(a) of the New York Insurance Law when it failed to obtain written informed consent prior to subjecting applicants to HIV related testing.

The Company indicated that it has addressed the issues noted.

6. Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) states:

“If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Subpart, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this Subpart, shall be labeled ‘Revised Illustration’ and shall be signed and dated by the applicant or policyowner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.”

The examiner’s review of a sample of 29 individual life insurance applications where an illustration was used in the sale of the policy revealed that in 10 (34.5%) cases, the original illustration used in the sale of the policy was not signed by the applicant. Also, in 5 of the 29 (17.2%) cases, the illustration used in the sale of the policy was not signed by the applicant at the time of application.

The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by failing to have a copy of the illustration used in the sale of the policy signed by the applicant at the time of application.

The Company indicated that it has addressed the issues noted.

7. Section 3209 of the New York Insurance Law states, in part:

“(d) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(7) in addition, the applicant shall be advised that, when the policy is issued, a complete policy summary, including cost data, based on the benefits, premiums and dividends of the policy as issued, will be furnished; and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid; . . .”

Section 53-2.1 of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“(a) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(9) a statement advising the applicant that when the policy is issued, a complete policy summary including cost data, based on the benefits, premiums and dividends of the policy as issued will be furnished, and that, following the receipt of the policy

and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premium paid or the adjusted amount if such policy provides for a market-value adjustment pursuant to Section 3203(a)(11) of the Insurance Law; . . . ”

Section 243.2(b) of 11 NYCRR 243 (Insurance Regulation 152) states, in part:

“(b) Except as otherwise required by law or regulation, an insurer shall maintain:
 (1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. Policy records need not be segregated from the policy records of other states as long as they are maintained in accordance with the provisions of this Part A separate copy need not be maintained in an individual policy record, provided that any data relating to a specific contract or policy can be retrieved pursuant to Section 243.3(a) of this Part. A policy record shall include: . . .
 (iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy. . . .
 (8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review.”

A review of a specimen preliminary information provided by the Company for term life insurance policies issued with policy form P08TRM revealed that the preliminary information did not contain a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid. In addition, the examiner’s review of a sample of 10 policies issued with policy form P08TRM revealed that in seven (70%) cases, the files did not contain copies of the preliminary information.

The Company violated Section 3209(d)(7) of the New York Insurance Law and Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain term life insurance policies issued with policy form P08TRM.

The Company indicated that it has addressed the issues noted.

The Company also violated Section 243.2(b)(1)(iv) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain a copy of the preliminary information for term life insurance policies issued with policy form P08TRM in each of the seven files.

The Company indicated that it has addressed the issues noted.

8. Section 53-2.1 of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“(a) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(4) a table of values and benefits based upon current, median and guaranteed policy cost factors for the base policy and any rider at the end of each of the first five policy years, the tenth policy year and at the end of the policy years in which the proposed insured attains age 65, 75, 85 and 95. These values may be shown on a per thousand or per unit basis;

(5) the year coverage will terminate based upon current, median and guaranteed policy cost factors. These values may be shown on a per thousand or per unit basis;

(6) the interest rate basis for each table of values based upon current, median and guaranteed policy cost factors;

(7) the effective policy loan annual percentage interest rate and whether this rate is applied in advance or in arrears, adjustable or fixed; . . .

(9) a statement advising the applicant that when the policy is issued, a complete policy summary including cost data, based on the benefits, premiums and dividends of the policy as issued will be furnished, and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premium paid or the adjusted amount if such policy provides for a market-value adjustment pursuant to Section 3203(a)(11) of the Insurance Law; and

(10) life insurance cost indexes and the equivalent level annual dividend for the basic policy for 10 and 20 years, but in no case beyond the premium-paying period.

(b) The table of values and benefits based on guaranteed policy cost factors shall be labeled in a prominent manner ‘guaranteed’ and the table of values and benefits based on current and median policy cost factors shall be labeled in a prominent manner ‘not guaranteed.’”

Section 3209 of the New York Insurance Law states, in part:

“(d) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(5) the effective policy loan annual percentage interest rate, if the policy would contain this provision, and whether this rate is applied in advance or in arrears, adjustable or fixed;

(6) for the life insurance policies described in paragraph one of subsection (n) of this section, life insurance cost indexes and the equivalent level annual dividend for the basic policy for ten and twenty years, but in no case beyond the premium-paying period;

(7) in addition, the applicant shall be advised that, when the policy is issued, a complete policy summary, including cost data, based on the benefits, premiums and dividends of the policy as issued, will be furnished; and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid; . . . ”

The examiner's review of a sample of five (5) variable universal life insurance ("Magnastar") policies issued with policy form P05M1N-NY revealed that in all cases (100%), the preliminary information did not contain a statement indicating that there would be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid. Also, in all five (100%) policies reviewed, the preliminary information documents in the files did not include the following:

- a) Median values where required pursuant to Section 53-2.1(a)(4), (5), and (6) of Insurance Regulation 74.
- b) A statement of whether the loan rate is applied in advance or arrears, required by Section 53-2.1(a)(7) of Insurance Regulation 74 and Section 3209(d)(5) of the New York Insurance Law.
- c) Life insurance cost indexes for 10 and 20 years pursuant to Section 53-2.1(a)(10) of Insurance Regulation 74 and Section 3209(d)(6) of the New York Insurance Law.
- d) A label of "not guaranteed" for the table of values and benefits based on current policy cost factors, as required by Section 53-2.1(b) of Insurance Regulation 74.

The Company violated Section 3209(d)(7) of the New York Insurance Law and Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for variable universal life insurance policies issued with policy form P05M1N-NY.

The Company indicated that it has addressed the issues noted.

The Company violated Sections 53-2.1(a)(4), (5), and (6) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include median values in the preliminary information.

The Company indicated that it has addressed the issues noted.

The Company violated Section 3209(d)(5) of the New York Insurance Law and Section 53-2.1(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating whether the loan rate is applied in advance or arrears.

The Company indicated that it has addressed the issues noted.

The Company violated Section 3209(d)(6) of the New York Insurance Law and Section 53-2.1(a)(10) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include information

concerning the life insurance cost indexes for 10 and 20 policy years in the preliminary information.

The Company indicated that it has addressed the issues noted.

The Company violated Section 53-2.1(b) of 11 NYCRR 53 (Insurance Regulation 74) by failing to label the table of values and benefits based on current and median policy cost factors in a prominent manner as “not guaranteed.”

The Company indicated that it has addressed the issues noted.

9. Section 3209(b)(1) of the New York Insurance Law states, in part:

“No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, as set forth in subsection (n) of this section, unless the prospective purchaser has been provided with the following: . . .
(B) a policy summary upon delivery of the policy. . . .”

The examiner requested specimen copies of the policy summary documents provided to applicants for policies issued, during the examination period, under policy form P05M1N-NY (Magnastar policies). In its response, the Company indicated that while a policy summary form should be provided for Magnastar policies (P05M1N-NY), one is not being provided. The examiner’s review of the data files for life insurance policies issued during the examination period revealed that the Company issued 22 such policies.

The Company violated Section 3209(b)(1)(B) of the New York Insurance Law by failing to provide a policy summary to the applicants upon delivery of the policies.

The Company indicated that it has addressed the issues noted.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

1. Section 3211(b) of the New York Insurance Law states, in part:

“The notice required by paragraph one of subsection (a) hereof shall . . .
(2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state that unless payment is made on or before the date when due or within the specified grace period thereafter, the

policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.”

The examiner’s review of the premium notices for a sample of 39 lapsed policies revealed that the notices did not state that “unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.”

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices sent to life insurance policyholders that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.

The Company indicated that it is in the process of addressing the issues noted.

2. Section 3227 of the New York Insurance Law states, in part:

“(a) Interest, at the rate provided for in section three thousand two hundred fourteen of this article, shall be payable by life insurers, fraternal benefit societies, and life insurance departments of savings banks upon: (1) the value of policies surrendered by policyholders for cash values, including the rollover of annuity funds to other entities, and (2) the funds disbursed as policy loans. Such interest payment shall be added to and be a part of the total sum paid or be paid separately at the option of the insurer.

(b) The interest calculated on amounts described in paragraphs one and two of subsection (a) hereof shall be calculated from the date the documentation necessary to complete the transaction is received by the insurer and shall be payable if the funds are not mailed or delivered by the insurer within ten working days of said receipt.

(c) No interest need be payable pursuant to this section unless the amount of such interest is at least twenty-five dollars or if the payment of benefits by the insurer has been deferred pursuant to other provisions of this chapter. . . .”

The examiner’s review of a sample of 15 life insurance policies surrendered revealed that in three cases (20%), the Company failed to pay interest as required by Section 3227(c) of the New York Insurance Law.

The Company violated Section 3227(c) of the New York Insurance Law by failing to pay interest on surrender benefit payments.

On September 19, 2018, the Company provided the Department examiners with evidence that it paid the pending interest on the three surrendered policies that were not mailed or delivered

within ten working days from the date the documentation necessary to complete the transaction was received by the insurer and the interest due amounted to at least twenty-five dollars.

The Company indicated that it has addressed the issues noted.

3. Section 3240(h)(7) of the New York Insurance Law states:

“Within thirty days of the final disposition of the request, an insurer shall report to the superintendent through the lost policy finder any benefits paid and any other information requested by the superintendent.”

Section 226.5(a) of 11 NYCRR 226 (Insurance Regulation 200) states, in part:

“An insurer shall: ...

(2) report to the superintendent through a lost policy finder: ...

(ii) where the search reveals that benefits may be due, within 30 days of the final disposition of the request, the benefit paid and any other information requested by the superintendent.”

The examiner’s review of the Company’s closed files in the Department’s Lost Policy Finder (“LPF”) revealed that five consumer requests were reported as death claims in the process of settlement. The examiner’s review of the five LPF cases revealed that four claims were resolved. However, the Company did not report two of the resolved claims to the Superintendent through the LPF within 30 days of the final disposition of the request that the benefit was paid.

The Company violated Section 3240(h)(7) of the New York Insurance Law and Section 226.5(a)(2)(ii) of 11 NYCRR 226 (Insurance Regulation 200) by failing to report to the Superintendent through the lost policy finder any benefits paid within thirty days of the final disposition of the requests.

The Company indicated that it has addressed the issues noted.

4. Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) states, in part:

“...The warning statements required by subdivisions (a), (b) and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of conspicuous size...”

The examiner’s review of a sample of 10 life insurance paid death claims, 25 immediate annuity paid death claims, and 15 deferred annuity paid death claims revealed that in all 10 (100.0%) life insurance claims, all 25 (100.0%) immediate annuity claims, and 11 out of the 15

(73.3%) deferred annuity claims, the Company used claim forms in which the required New York fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form. Instead, the fraud warning statement is listed on a separate page.

The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim.

The Company indicated that it has addressed the issues noted.

5. Section 2122(a)(2) of the New York Insurance Law states:

“No insurance producer or other person, shall, by any advertisement or public announcement in this state, call attention to any unauthorized insurer or insurers.”

The examiner’s review of a sample of 25 life insurance policy loans issued during the examination period revealed that in 7 out of 25 (28%) cases, the loan applications contained the header of Pacific Life, the Company’s immediate parent. The Company was not identified as the insurer anywhere on these forms.

The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to an unauthorized insurer in its policy loan applications with New York policyholders.

The Company indicated that it has addressed the issues noted.

5. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent within thirty days of the facts relative to the termination of the certificates of appointments of five agents.	11
B	The examiner recommends that the Company exercise due care in preparation of its data file for producer licensing and ensure each agent's licensing status is updated correctly.	11
C	The Company violated Section 1313(f) of the New York Insurance Law by disclosing the assets of entities in its holding company system without providing a statement of the separate financial condition of the Company.	12
D	The Company violated Section 1313(d) of the New York Insurance Law by stating in its advertisement that all assigned contracts will receive a statement of irrevocable guarantee from the guarantor Pacific LifeCorp, a member of the holding company system.	13
E	The Company violated Section 219.4(c) of 11 NYCRR 219 (Insurance Regulation 34-A) by using the term "guarantee" in contexts that may be deemed misleading and capable of being deceptive.	13
F	The Company violated Section 219.4(e) of 11 NYCRR 219 (Insurance Regulation 34-A) when it stated in its advertisement that a return-of-premium death benefit is included with the policy at no additional cost and low cost.	14
G	The Company violated Section 219.4(h) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to substantiate the use of the phrase "low cost" to describe the cost of its life insurance and annuity products being advertised.	14
H	The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include the name of the city, town or village in which it has its home office in all 58 advertisements reviewed.	15

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 219.4(x) of 11 NYCRR 219 (Insurance Regulation 34-A) by overemphasizing the availability of the reduced premium loads and increased persistency credits and by failing to explain how the reduced premium loads can help the policy's performance by an asterisk or other appropriate symbol which refers the reader to the specific portion of the advertisement which contains the full rate schedule for the policy being advertised.	16
J	The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to maintain a complete advertising file with a notation indicating the extent of distribution.	16
K	The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by failing to file its agent compensation schedule used during the examination period with the Department.	17
L	The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine and ascertain that the Disclosure Statements were accurate as well as complete and met the requirements of the Regulation.	24
M	The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by using a modified Disclosure Statement which differed from the forms set forth in Appendix 10B of Insurance Regulation 60 without obtaining prior approval.	24
N	The Company also violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60) by failing to implement procedures that comply with Regulation 60 to ensure that, for annuity replacements, the Company produce information in the Summary Result Comparison section of the Disclosure Statement concerning the surrender values and death benefit values in 1 year and 3 years for the existing annuity contracts.	24
O	The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to have deficiencies corrected or reject the application when the required forms were not received or the forms did not meet the requirements of Insurance Regulation 60.	25

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
P	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to furnish to the insurer whose policy was replaced, a copy of the proposal, including the sales material and the completed Disclosure Statement within the required time frame.	26
Q	The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide a revised Disclosure Statement to the applicant in the cases where the life insurance policy was issued other than as applied for.	27
R	The Company violated Section 51.6(b)(5) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to deliver the completed Disclosure Statement to the policyholder no later than the time of delivery of the policy.	27
S	The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60) by allowing the applicants to sign the application and the Disclosure Statement before obtaining the information necessary to complete the Disclosure Statement from the replaced company, thereby failing to make available full and clear information on which an applicant for life insurance policies can make a decision in his or her best interest.	28
T	The Company violated Section 51.1(b) of 11 NYCRR 51 (Insurance Regulation 60) by allowing the applicants to sign the application and the Disclosure Statement before obtaining the information necessary to complete the Disclosure Statement from the replaced company, thereby failing to make available full and clear information on which an applicant for annuity contracts can make a decision in his or her best interest.	30
U	The Company violated Section 224.4(c) of 11 NYCRR 224 (Insurance Regulation 187) by processing annuities subsequent deposits into existing annuity contracts that were recommended to a consumer without obtaining all suitability information required under Section 224.3(e) of 11 NYCRR 224 (Insurance Regulation 187).	32
V	The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on the lives of minors in amounts exceeding the limits allowed by law.	33

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
W	The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent.	33
X	The examiner recommends that the Company refile policy forms P08SE5 and P08VP1-NY and include the Guideline Single Premium and Guideline Level Premium as bracketed items.	33
Y	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants written preliminary information required by Section 3209 of the New York Insurance Law.	34
Z	The Company violated Section 3209(d)(7) of the New York Insurance Law by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain term life policies.	34
AA	The Company violated Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) and Section 3209(d)(7) of the New York Insurance Law by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain variable universal life insurance policies.	36
BB	The Company also violated Section 3209(f) of the New York Insurance Law by failing to deliver the policy summary to variable universal life insurance applicants as a separate document.	36
CC	The examiner recommends that the Company use two separate documents for the required disclosures concerning the preliminary information and the policy summary as required under Section 3209(f) of the New York Insurance Law.	36
DD	The Company violated Section 2611(a) of the New York Insurance Law when it failed to obtain written informed consent prior to subjecting applicants to HIV related testing.	36
EE	The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by failing to have a copy of the illustration used in the sale of the policy signed by the applicant at the time of application.	37

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
FF	The Company violated Section 3209(d)(7) of the New York Insurance Law and Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for certain term life insurance policies issued with policy form P08TRM.	38
GG	The Company also violated Section 243.2(b)(1)(iv) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain a copy of the preliminary information for term life insurance policies issued with policy form P08TRM in each of the seven files.	38
HH	The Company violated Section 3209(d)(7) of the New York Insurance Law and Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating that there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid for variable universal life insurance policies issued with policy form P05M1N-NY.	40
II	The Company violated Sections 53-2.1(a)(4), (5), and (6) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include median values in the preliminary information.	40
JJ	The Company violated Section 3209(d)(5) of the New York Insurance Law and Section 53-2.1(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include in the preliminary information, a statement indicating whether the loan rate is applied in advance or arrears.	40
KK	The Company violated Section 3209(d)(6) of the New York Insurance Law and Section 53-2.1(a)(10) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include information concerning the life insurance cost indexes for 10 and 20 policy years in the preliminary information.	40
LL	The Company violated Section 53-2.1(b) of 11 NYCRR 53 (Insurance Regulation 74) by failing to label the table of values and benefits based on current and median policy cost factors in a prominent manner as “not guaranteed.”	41
MM	The Company violated Section 3209(b)(1)(B) of the New York Insurance Law by failing to provide a policy summary to the applicants upon delivery of the policies.	41

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
NN	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices sent to life insurance policyholders that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.	42
OO	The Company violated Section 3227(c) of the New York Insurance Law by failing to pay interest on surrender benefit payments.	42
PP	The Company violated Section 3240(h)(7) of the New York Insurance Law and Section 226.5(a)(2)(ii) of 11 NYCRR 226 (Insurance Regulation 200) by failing to report to the Superintendent through the lost policy finder any benefits paid within thirty days of the final disposition of the requests.	43
QQ	The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim.	44
RR	The Company violated Section 2122(a)(2) of the New York Insurance Law by calling attention to an unauthorized insurer in its policy loan applications with New York policyholders.	44


Respectfully submitted,



Pablo A. Ramos
Financial Services Examiner 3

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

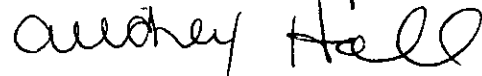
Pablo A. Ramos, being duly sworn, deposes and says that the foregoing report, subscribed by him,
is true to the best of his knowledge and belief.



Pablo A. Ramos

Subscribed and sworn to before me

this 20th day of September, 2023



AUDREY HALL
Notary Public, State of New York
No. 01HA6274000
Qualified in Kings County
Commission Expires January 28, 2025

APPOINTMENT NO. 31780

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

PABLO A. RAMOS

as a proper person to examine the affairs of the

PACIFIC LIFE & ANNUITY COMPANY

and to make a report to me in writing of the condition of said

COMPANY

with such other information as he shall deem requisite.

*In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York*

this 31st day of May, 2018

*MARIA T. VULLO
Superintendent of Financial Services*

By: Mark McLeod
*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

